

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRICKMAN INVESTMENTS, INC.,	:	Civil Action No. 1:07-cv-11086-DAB
Individually and On Behalf of All Others	:	
Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
SECURITY CAPITAL ASSURANCE LTD.,	:	
et al.,	:	
	:	
Defendants.	:	
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2 WEST, INC., On Behalf of Itself and All	:	Civil Action No. 1:07-cv-11358-DAB
Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
SECURITY CAPITAL ASSURANCE LTD.,	:	
et al.,	:	
	:	
Defendants.	:	
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REPLY MEMORANDUM IN FURTHER SUPPORT OF THE MOTION OF UNITED FOOD
& COMMERCIAL WORKERS UNION LOCAL 655, AFL-CIO, FOOD EMPLOYERS JOINT
PENSION PLAN AND DISTRICT NO. 9, I.A. OF M. & A.W. PENSION TRUST FOR
CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFFS AND FOR APPROVAL OF
SELECTION OF LEAD COUNSEL

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ROBERT CLARKE, Individually and On	:	Civil Action No. 1:08-cv-00158-DAB
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
SECURITY CAPITAL ASSURANCE LTD.,	:	
et al.,	:	
	:	
Defendants.	:	
	:	
	X	

Institutional Investors United Food & Commercial Workers Union Local 655, AFL-CIO, Food Employers Joint Pension Plan (“United Food & Commercial Workers Pension Plan”) and District No. 9, I.A. of M. & A.W. Pension Trust (“District No. 9 Pension Trust”) respectfully submit this reply memorandum of law in further support of their motion for consolidation of the above-captioned related actions, appointment as Lead Plaintiffs, approval of their selection of the law firm of Coughlin Stoia Geller Rudman & Robbins LLP (“Coughlin Stoia”) to serve as Lead Counsel and in response to the opposition memoranda filed by Employees’ Retirement System of the State of Rhode Island (“Rhode Island System”) and HGK Asset Management, Inc. (“HGK”).

In their opposition memoranda, neither Rhode Island System nor HGK raise any issues about the adequacy or typicality of United Food & Commercial Workers Pension Plan and District No. 9 Pension Trust to represent the interests of the class in this action or the proper calculation of their financial interest. By contrast, legitimate concerns have been raised with respect to the motions of both Rhode Island System and HGK.

As detailed in United Food & Commercial Workers Pension Plan and District No. 9 Pension Trust’s memorandum in further support of their motion,¹ Rhode Island System appears to have potential conflicts of interest with defendant Security Capital Assurance Ltd. (“Security Capital Assurance” or the “Company”), and/or its subsidiary XL Capital Assurance, since Security Capital Assurance and/or XL Capital Assurance insure municipal bonds that have been issued by the State of Rhode Island or an entity with which it is affiliated. *See* Opp. Brief at *2, *5-*6. Because Rhode Island System has not provided sufficient information to respond to these concerns, United Food &

¹ *See* Memorandum in Further Support of the Motion of United Food & Commercial Workers Pension Plan and District No. 9 Pension Trust for Consolidation, Appointment as Lead Plaintiffs and for Approval of Selection of Lead Counsel and in Opposition to the Competing Motions, filed February 25, 2008 (the “Opp. Brief”).

Commercial Workers Pension Plan and District No. 9 Pension Trust had requested permission to seek discovery on this issue, in accordance with 15 U.S.C. §78u-4(a)(3)(B)(iv). *See* Opp. Brief at *6, n.2.² That request continues.

United Food & Commercial Workers Pension Plan and District No. 9 Pension Trust also raised serious doubts about HGK's ability to serve as a fiduciary to a class of investors based on its surprise and unexplained withdrawal after two years of litigation as the sole lead plaintiff for investors in the securities class action against Williams Companies – *In re Williams Securities Litigation*, Case No. 02-CV-72-H(M) (N.D. Okla.), *see* Opp. Brief at *2-*3, *6-*7, and its failure to properly report its proper financial interest in this litigation. *Id.* at *3, *9-*10. Moreover, HGK appears to only be seeking to represent a class of bondholders in this action and not the class of investors as a whole – an effort at splintering the litigation at this early stage, which is routinely rejected. *See Hevesi v. Citigroup Inc.*, 366 F.3d 70, 82 (2d Cir. 2004) (“[n]othing in the PSLRA indicates that district courts must choose a lead plaintiff with standing to sue on every available cause of action.”); *see also In re Cendant Corp. Litig.*, 182 F.R.D. 144, 148 (D.N.J. 1998) (“every warrior in this battle cannot be a general”).

In light of these concerns, the only movant who properly satisfies the requirements of the PSLRA in this litigation is United Food & Commercial Workers Pension Plan and District No. 9 Pension Trust. Accordingly, it is respectfully submitted that their motion be granted in full and the competing motions be denied.

² Indeed, Rhode Island System itself recognizes the need for limited discovery in this type of situation, as it made a similar request for permission to obtain discovery from HGK concerning HGK's investment agreement with HGK's clients. *See* Memorandum of Law in Further Support of the Motion of Employees' Retirement System of the State of Rhode Island for Consolidation, Appointment as Lead Plaintiff, and Approval of Its Selection of Counsel, and in Opposition to Competing Motions at *2, *6, dated February 25, 2008.

DATED: March 6, 2008

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

/s/ David A. Rosenfeld

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[Proposed] Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, David A. Rosenfeld, hereby certify that on March 6, 2008, I caused a true and correct copy of the attached:

Reply Memorandum in Further Support of the Motion of United Food & Commercial Workers Union Local 655, AFL-CIO, Food Employers Joint Pension Plan and District No. 9, I.A. of M. & A.W. Pension Trust for Consolidation, Appointment as Lead Plaintiffs and for Approval of Selection of Lead Counsel, to be served: (i) electronically on all counsel registered for electronic service for this case; and (ii) by first-class mail to any additional counsel.

/s/ David A. Rosenfeld
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SECURITY CAPITAL ASSURANCE 07

Service List - 2/25/2008 (07-0272)

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